

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005

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TELEX

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RECORDATION NO. 10706 Filed 1425

AUG 8 1979 - 12 40 PM

INTERSTATE COMMERCE COMMISSION

9-220A070

Date AUG 8 1979

Fee \$ 50.00

ICC Washington, D. C.

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RECORDATION NO. 10706-A Filed 1425

AUG 8 1979 - 12 40 PM
INTERSTATE COMMERCE COMMISSION

August 3, 1979

Meridian & Bigbee Railroad Company
Conditional Sale Agreement Dated as of May 31, 1979
9.75% Conditional Sale Indebtedness Due 1999

Dear Mr. Homme:

Pursuant to 49 U.S.C. § 11303(a) and the Commission's rules and regulations thereunder, enclosed for filing and recordation on behalf of Meridian & Bigbee Railroad Company are counterparts of the following documents:

- (1) Conditional Sale Agreement dated as of May 31, 1979, among ITEL Railcar, Inc., Meridian & Bigbee Railroad Company and American Can Company; and
- (2) Agreement and Assignment dated as of May 31, 1979, between ITEL Railcar, Inc. and The Chase Manhattan Bank (National Association), as Agent.

The names and addresses of the parties to the aforementioned Agreements are as follows:

- (1) Assignee-Agent:

The Chase Manhattan Bank (National Association),
One New York Plaza,
New York, N.Y. 10015

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New member

- A

Counterpart
Alan C. Hughes

(2) Builder-Vendor:

Itel Railcar, Inc.,
1870 The Exchange Suite 260,
Atlanta, Georgia 31339

(3) Railroad:

Meridian & Bigbee Railroad Company,
119 22nd Avenue South,
Meridian, Mississippi 39301

(4) Guarantor:

American Can Company,
American Lane,
Greenwich, Connecticut 06830

Please file and record the documents referred to in this letter and cross-index them under the names of the Assignee-Agent, the Builder-Vendor, the Railroad and the Guarantor.

The equipment covered by the aforementioned documents consists of the following:

300 70-ton 50.5 ft. box cars with rigid under frames, AAR Mechanical Designation XM, with Plate C, bearing identifying numbers of the Railroad, MB 5000-5299, both inclusive.

Also enclosed is a check for \$50 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting 1 document).

Please stamp all counterparts of the enclosed documents, retain one copy of the instruments for your files and forward the remaining counterparts to me. Thank you for your assistance.

Sincerely,



Jacqueline B. Goodyear

H. G. Homme, Esq.,
Secretary,
Interstate Commerce Commission,
Washington, D.C. 20423

Encl.

ZZ

RECORDATION NO. 10706-A Filed 1425

AUG 8 1979 12 40 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of May 31, 1979

among

ITEL RAILCAR, INC.,
the Builder

and

THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION),
as Agent

AGREEMENT AND ASSIGNMENT

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AGREEMENT AND ASSIGNMENT, dated as of May 31, 1979, between THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION) acting as Agent under a Finance Agreement (the "Finance Agreement") dated as of the date hereof (said Agent, and its successors and assigns so acting, being hereinafter called the "Assignee"), and ITEL RAILCAR, INC. (the "Builder").

WHEREAS the Builder and Meridian & Bigbee Railroad Company (the "Railroad"), and American Can Company (the "Guarantor") have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA"), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder, and the purchase by the Railroad of the railroad equipment described in Schedule B to the CSA (the "Equipment");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: That, in consideration of the sum of \$1 and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee:

(a) all the right, title and interest of the Builder in and to each unit of Equipment when and as severally delivered to and accepted by the Railroad, and when and as the amount required to be paid for such unit (other than amounts owing under supplemental invoices) is paid to the Builder by the Assignee pursuant to Section 4 hereof and/or by the Railroad pursuant to subparagraph (a) of the third paragraph of Article 4 of the CSA (other than amounts payable in respect of any supplemental invoice);

(b) all the right, title and interest of the Builder in and to the CSA (except the right to construct and deliver the Builder's Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof, and in subparagraph (a) of the

third paragraph of Article 4 thereof and the last paragraph of Article 16 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the CSA in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Builder's rights, powers, privileges and remedies under the CSA;

without any recourse against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the CSA or with respect to its obligations contained or referred to in Article 15 of the CSA, or relieve the Railroad from its obligations to the Builder contained or referred to in Articles 2, 3, 4, 5, 14, 15 and 16 of the CSA, it being agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the CSA, all obligations of the Builder to the Railroad with respect to the Equipment shall be enforceable by the Railroad, its successors and assigns, against and only against the Builder. The Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the CSA and will deliver the same upon completion to the Railroad in

accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the provisions of the CSA set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Railroad that, at the time of delivery of each unit of the Equipment under the CSA, it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and other than the rights of the Assignee under this Agreement); and the Builder further agrees that it will defend the title to each unit of Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Railroad thereunder. The Builder will not deliver any of its Equipment to the Railroad under the CSA until the filings referred to in Article 20 of the CSA have been effected (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filings have been effected).

SECTION 3. The Builder agrees with the Assignee that in any suit or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff or counterclaim whatsoever of the Railroad or the Guarantor arising out of a breach by the Builder of any obligation with respect to the Equipment or the construction, delivery or warranty thereof, or by reason of any defense, setoff or counterclaim whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad or the Guarantor by the Builder. The Builder's obligation so to indemnify and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 16 of the CSA, to strike any defense, setoff or counterclaim asserted by the Railroad or the Guarantor in any such suit or action and (b) if the court or other body having jurisdiction in such suit or action denies such motion or other action and accepts such defense, setoff or counterclaim as a triable issue in such suit or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff or counterclaim and the Assignee's giving the Builder

the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff or counterclaim.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any such liability or claim actually known to the Assignee and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Railroad or the Guarantor with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price of the Equipment as shown on the invoice or supplemental invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee, as provided in Article 16 of the CSA, at least five business days (as defined in said Article 4) prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested:

(a) a bill of sale from the Builder to the Assignee transferring to the Assignee all right, title and interest of the Builder in the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the CSA the Builder had legal title to such units and good and lawful right to sell such units and that

such units were free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and other than the rights of the Assignee under this Assignment), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the CSA;

(c) an invoice of the Builder for the units of the Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, to the effect that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the CSA has been duly authorized, executed and delivered by the Railroad, the Guarantor and the Builder and is a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal, valid and binding instrument enforceable against the Builder in accordance with its terms, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) the Assignee has a valid and perfected first security interest in the units of the Equipment in such Group on the terms purported to be granted by the CSA, and such units, at the time of delivery thereof to the Railroad under the CSA, were free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and other than the rights of the Builder excluded from this Assignment),

(vi) no authorization of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the CSA or this Assignment, or if any such authority is necessary, it has been obtained (specifying the same), (vii) the CSA and this Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the CSA, this Assignment or any certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; such opinion shall also state that said counsel have examined the opinions being delivered on such Closing Date pursuant to subparagraphs (e) and (f) of this Section 4, that such opinions are satisfactory in form and scope to said counsel and that said counsel believe that the Assignee, the Investors and they are justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any such Investors;

(e) an opinion of counsel for the Railroad and the Guarantor, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (v), (vi), (vii) and (viii) of subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of any agreement by parties thereto other than the Railroad or the Guarantor) and stating that the Railroad and the Guarantor are duly organized and existing corporations in good standing under the laws of their jurisdiction of incorporation and have the full power and authority to own their properties and to carry on their business as conducted on the date thereof;

(f) an opinion of counsel for the Builder and for Itel Corporation, as a guarantor under the CSA ("Itel"), dated as of such Closing Date, to the effect that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the full power and authority to own its properties and to carry on its business as now conducted, (ii) the CSA has been duly authorized, executed and delivered by the Builder and Itel and, assuming due authorization,

execution and delivery by the Railroad and the Guarantor, is a legal and valid instrument binding upon the Builder and IteI and enforceable against the Builder and IteI in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and, assuming due authorization, execution and delivery by the Assignee, is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment and (v) the bill of sale referred to in subparagraph (a) of this paragraph has been duly authorized, executed and delivered by the Builder and is valid and effective to transfer all right, title and interest of the Builder in and to the units of Equipment in such Group to the Assignee, free from all claims, liens, security interests and other encumbrances of any nature (other than those created by the CSA and other than the rights of the Assignee under this Assignment);

(g) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that (i) to the best of his knowledge and belief, no event of default, or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and is then continuing, and (ii) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) and, to the best of his knowledge and belief, no other tax liens have been filed and are currently in effect which would adversely affect the title and security interest of the Assignee in the Equipment; and

(h) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad;

provided, however, that with respect to Equipment for which a supplemental invoice is submitted by the Builder as permitted by Article 4 of the CSA, the only documents which must be delivered to the Assignee are those required by subparagraphs (c), (g) and (h) of this Section 4.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms, by a general reference to limitations as to enforceability, imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraphs (d) and (e), counsel may rely on the opinion of counsel for the Builder as to authorization, execution and delivery by the Builder of the documents executed by the Builder and as to title to the Equipment of the Builder at the time of delivery thereof under the CSA; in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States on the opinion of counsel for the Builder or the opinion of counsel for the Railroad or the Guarantor as to such matter; in giving the opinion specified in said subparagraph (e), counsel for the Guarantor may rely as to Mississippi and Alabama law on the opinion of Messrs. Deen, Cameron, Prichard & Young, counsel for the Railroad.

The obligation of the Assignee hereunder to make any payment provided for in this Section 4 is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 17 of the CSA or if an event of default, or any event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and be continuing under the CSA. In the event that the Assignee shall not make payment for any Group of the Equipment as provided in the first paragraph of this Section 4 (other than in respect of a supplemental invoice), the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA. In the event of any such assignment any such subsequent or successive assignee shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad and the Guarantor, the CSA is, insofar as the Builder is concerned, a valid and existing agreement binding upon it and the Railroad and the Guarantor in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, subsequent to the receipt by the Builder of the purchase price for the Equipment, and upon request of the Assignee, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment of the Builder except any portion thereby to be paid for in any supplemental invoice.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder as between parties hereto shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 24 of the CSA.

SECTION 8. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument

STATE OF GEORGIA,)
) ss.:
COUNTY OF COBB,)

On this 17th day of AUG. 1979, before me personally appeared HUBERT P HAHN, to me personally known, who, being by me duly sworn, says that he is a Vice President of ITEL RAILCAR, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Mary Lou McCauley
Notary Public

[Notarial Seal]

My Commission expires

Notary Public, Georgia, State at Large
My Commission Expires Oct. 19, 1982

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this 2nd day of August 1979, before me personally appeared F. W. CLARK, to me personally known, who, being by me duly sworn, says that he is a Second Vice President of THE CHASE MANHATTAN BANK (National Association) that one of the seals affixed to the foregoing instrument is the corporate seal of said bank, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

Della M. Killett
Notary Public

[Notarial Seal]

My Commission expires

DELLA M. KILLETT
Notary Public, State of New York
No. 24-4659667
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1981

AGREEMENT AND ASSIGNMENT

Dated as of May 31, 1979

among

ITEL RAILCAR, INC.,
the Builder

and

THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION),
as Agent

AGREEMENT AND ASSIGNMENT

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AGREEMENT AND ASSIGNMENT, dated as of May 31, 1979, between THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION) acting as Agent under a Finance Agreement (the "Finance Agreement") dated as of the date hereof (said Agent, and its successors and assigns so acting, being hereinafter called the "Assignee"), and ITEL RAILCAR, INC. (the "Builder").

WHEREAS the Builder and Meridian & Bigbee Railroad Company (the "Railroad"), and American Can Company (the "Guarantor") have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA"), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder, and the purchase by the Railroad of the railroad equipment described in Schedule B to the CSA (the "Equipment");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: That, in consideration of the sum of \$1 and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee:

(a) all the right, title and interest of the Builder in and to each unit of Equipment when and as severally delivered to and accepted by the Railroad, and when and as the amount required to be paid for such unit (other than amounts owing under supplemental invoices) is paid to the Builder by the Assignee pursuant to Section 4 hereof and/or by the Railroad pursuant to subparagraph (a) of the third paragraph of Article 4 of the CSA (other than amounts payable in respect of any supplemental invoice);

(b) all the right, title and interest of the Builder in and to the CSA (except the right to construct and deliver the Builder's Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof, and in subparagraph (a) of the

third paragraph of Article 4 thereof and the last paragraph of Article 16 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the CSA in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Builder's rights, powers, privileges and remedies under the CSA;

without any recourse against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the CSA or with respect to its obligations contained or referred to in Article 15 of the CSA, or relieve the Railroad from its obligations to the Builder contained or referred to in Articles 2, 3, 4, 5, 14, 15 and 16 of the CSA, it being agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the CSA, all obligations of the Builder to the Railroad with respect to the Equipment shall be enforceable by the Railroad, its successors and assigns, against and only against the Builder. The Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the CSA and will deliver the same upon completion to the Railroad in

accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the provisions of the CSA set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Railroad that, at the time of delivery of each unit of the Equipment under the CSA, it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and other than the rights of the Assignee under this Agreement); and the Builder further agrees that it will defend the title to each unit of Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Railroad thereunder. The Builder will not deliver any of its Equipment to the Railroad under the CSA until the filings referred to in Article 20 of the CSA have been effected (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filings have been effected).

SECTION 3. The Builder agrees with the Assignee that in any suit or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff or counterclaim whatsoever of the Railroad or the Guarantor arising out of a breach by the Builder of any obligation with respect to the Equipment or the construction, delivery or warranty thereof, or by reason of any defense, setoff or counterclaim whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad or the Guarantor by the Builder. The Builder's obligation so to indemnify and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 16 of the CSA, to strike any defense, setoff or counterclaim asserted by the Railroad or the Guarantor in any such suit or action and (b) if the court or other body having jurisdiction in such suit or action denies such motion or other action and accepts such defense, setoff or counterclaim as a triable issue in such suit or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff or counterclaim and the Assignee's giving the Builder

the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff or counterclaim.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any such liability or claim actually known to the Assignee and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Railroad or the Guarantor with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price of the Equipment as shown on the invoice or supplemental invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee, as provided in Article 16 of the CSA, at least five business days (as defined in said Article 4) prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested:

(a) a bill of sale from the Builder to the Assignee transferring to the Assignee all right, title and interest of the Builder in the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the CSA the Builder had legal title to such units and good and lawful right to sell such units and that

such units were free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and other than the rights of the Assignee under this Assignment), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the CSA;

(c) an invoice of the Builder for the units of the Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, to the effect that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the CSA has been duly authorized, executed and delivered by the Railroad, the Guarantor and the Builder and is a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal, valid and binding instrument enforceable against the Builder in accordance with its terms, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) the Assignee has a valid and perfected first security interest in the units of the Equipment in such Group on the terms purported to be granted by the CSA, and such units, at the time of delivery thereof to the Railroad under the CSA, were free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and other than the rights of the Builder excluded from this Assignment),

(vi) no authorization of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the CSA or this Assignment, or if any such authority is necessary, it has been obtained (specifying the same), (vii) the CSA and this Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the CSA, this Assignment or any certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; such opinion shall also state that said counsel have examined the opinions being delivered on such Closing Date pursuant to subparagraphs (e) and (f) of this Section 4, that such opinions are satisfactory in form and scope to said counsel and that said counsel believe that the Assignee, the Investors and they are justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any such Investors;

(e) an opinion of counsel for the Railroad and the Guarantor, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (v), (vi), (vii) and (viii) of subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of any agreement by parties thereto other than the Railroad or the Guarantor) and stating that the Railroad and the Guarantor are duly organized and existing corporations in good standing under the laws of their jurisdiction of incorporation and have the full power and authority to own their properties and to carry on their business as conducted on the date thereof;

(f) an opinion of counsel for the Builder and for Itel Corporation, as a guarantor under the CSA ("Itel"), dated as of such Closing Date, to the effect that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the full power and authority to own its properties and to carry on its business as now conducted, (ii) the CSA has been duly authorized, executed and delivered by the Builder and Itel and, assuming due authorization,

execution and delivery by the Railroad and the Guarantor, is a legal and valid instrument binding upon the Builder and IteI and enforceable against the Builder and IteI in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and, assuming due authorization, execution and delivery by the Assignee, is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment and (v) the bill of sale referred to in subparagraph (a) of this paragraph has been duly authorized, executed and delivered by the Builder and is valid and effective to transfer all right, title and interest of the Builder in and to the units of Equipment in such Group to the Assignee, free from all claims, liens, security interests and other encumbrances of any nature (other than those created by the CSA and other than the rights of the Assignee under this Assignment);

(g) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that (i) to the best of his knowledge and belief, no event of default, or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and is then continuing, and (ii) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) and, to the best of his knowledge and belief, no other tax liens have been filed and are currently in effect which would adversely affect the title and security interest of the Assignee in the Equipment; and

(h) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad;

provided, however, that with respect to Equipment for which a supplemental invoice is submitted by the Builder as permitted by Article 4 of the CSA, the only documents which must be delivered to the Assignee are those required by subparagraphs (c), (g) and (h) of this Section 4.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms, by a general reference to limitations as to enforceability, imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraphs (d) and (e), counsel may rely on the opinion of counsel for the Builder as to authorization, execution and delivery by the Builder of the documents executed by the Builder and as to title to the Equipment of the Builder at the time of delivery thereof under the CSA; in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States on the opinion of counsel for the Builder or the opinion of counsel for the Railroad or the Guarantor as to such matter; in giving the opinion specified in said subparagraph (e), counsel for the Guarantor may rely as to Mississippi and Alabama law on the opinion of Messrs. Deen, Cameron, Prichard & Young, counsel for the Railroad.

The obligation of the Assignee hereunder to make any payment provided for in this Section 4 is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 17 of the CSA or if an event of default, or any event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and be continuing under the CSA. In the event that the Assignee shall not make payment for any Group of the Equipment as provided in the first paragraph of this Section 4 (other than in respect of a supplemental invoice), the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA. In the event of any such assignment any such subsequent or successive assignee shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad and the Guarantor, the CSA is, insofar as the Builder is concerned, a valid and existing agreement binding upon it and the Railroad and the Guarantor in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, subsequent to the receipt by the Builder of the purchase price for the Equipment, and upon request of the Assignee, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment of the Builder except any portion thereby to be paid for in any supplemental invoice.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder as between parties hereto shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 24 of the CSA.

SECTION 8. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument

to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

ITEL RAILCAR, INC.,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION) as Agent,

by

[Corporate Seal]

Attest:

Assistant Secretary

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

The undersigned hereby consent and acknowledge due notice of the assignment made by the foregoing Agreement and Assignment as of May 31, 1979.

MERIDIAN & BIGBEE RAILROAD COMPANY,

by

Maurice V. Dandy

President

AMERICAN CAN COMPANY,

by

Senior Vice President

AGREEMENT AND ASSIGNMENT

Dated as of May 31, 1979

among

ITEL RAILCAR, INC.,
the Builder

and

THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION),
as Agent

AGREEMENT AND ASSIGNMENT

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AGREEMENT AND ASSIGNMENT, dated as of May 31, 1979, between THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION) acting as Agent under a Finance Agreement (the "Finance Agreement") dated as of the date hereof (said Agent, and its successors and assigns so acting, being hereinafter called the "Assignee"), and ITEL RAILCAR, INC. (the "Builder").

WHEREAS the Builder and Meridian & Bigbee Railroad Company (the "Railroad"), and American Can Company (the "Guarantor") have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA"), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder, and the purchase by the Railroad of the railroad equipment described in Schedule B to the CSA (the "Equipment");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: That, in consideration of the sum of \$1 and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee:

(a) all the right, title and interest of the Builder in and to each unit of Equipment when and as severally delivered to and accepted by the Railroad, and when and as the amount required to be paid for such unit (other than amounts owing under supplemental invoices) is paid to the Builder by the Assignee pursuant to Section 4 hereof and/or by the Railroad pursuant to subparagraph (a) of the third paragraph of Article 4 of the CSA (other than amounts payable in respect of any supplemental invoice);

(b) all the right, title and interest of the Builder in and to the CSA (except the right to construct and deliver the Builder's Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof, and in subparagraph (a) of the

third paragraph of Article 4 thereof and the last paragraph of Article 16 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the CSA in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Builder's rights, powers, privileges and remedies under the CSA;

without any recourse against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the CSA or with respect to its obligations contained or referred to in Article 15 of the CSA, or relieve the Railroad from its obligations to the Builder contained or referred to in Articles 2, 3, 4, 5, 14, 15 and 16 of the CSA, it being agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the CSA, all obligations of the Builder to the Railroad with respect to the Equipment shall be enforceable by the Railroad, its successors and assigns, against and only against the Builder. The Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the CSA and will deliver the same upon completion to the Railroad in

accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the provisions of the CSA set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Railroad that, at the time of delivery of each unit of the Equipment under the CSA, it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and other than the rights of the Assignee under this Agreement); and the Builder further agrees that it will defend the title to each unit of Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Railroad thereunder. The Builder will not deliver any of its Equipment to the Railroad under the CSA until the filings referred to in Article 20 of the CSA have been effected (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filings have been effected).

SECTION 3. The Builder agrees with the Assignee that in any suit or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff or counterclaim whatsoever of the Railroad or the Guarantor arising out of a breach by the Builder of any obligation with respect to the Equipment or the construction, delivery or warranty thereof, or by reason of any defense, setoff or counterclaim whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad or the Guarantor by the Builder. The Builder's obligation so to indemnify and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 16 of the CSA, to strike any defense, setoff or counterclaim asserted by the Railroad or the Guarantor in any such suit or action and (b) if the court or other body having jurisdiction in such suit or action denies such motion or other action and accepts such defense, setoff or counterclaim as a triable issue in such suit or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff or counterclaim and the Assignee's giving the Builder

the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff or counterclaim.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any such liability or claim actually known to the Assignee and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Railroad or the Guarantor with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price of the Equipment as shown on the invoice or supplemental invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee, as provided in Article 16 of the CSA, at least five business days (as defined in said Article 4) prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested:

(a) a bill of sale from the Builder to the Assignee transferring to the Assignee all right, title and interest of the Builder in the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the CSA the Builder had legal title to such units and good and lawful right to sell such units and that

such units were free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and other than the rights of the Assignee under this Assignment), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the CSA;

(c) an invoice of the Builder for the units of the Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, to the effect that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the CSA has been duly authorized, executed and delivered by the Railroad, the Guarantor and the Builder and is a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal, valid and binding instrument enforceable against the Builder in accordance with its terms, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) the Assignee has a valid and perfected first security interest in the units of the Equipment in such Group on the terms purported to be granted by the CSA, and such units, at the time of delivery thereof to the Railroad under the CSA, were free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and other than the rights of the Builder excluded from this Assignment),

(vi) no authorization of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the CSA or this Assignment, or if any such authority is necessary, it has been obtained (specifying the same), (vii) the CSA and this Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the CSA, this Assignment or any certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; such opinion shall also state that said counsel have examined the opinions being delivered on such Closing Date pursuant to subparagraphs (e) and (f) of this Section 4, that such opinions are satisfactory in form and scope to said counsel and that said counsel believe that the Assignee, the Investors and they are justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any such Investors;

(e) an opinion of counsel for the Railroad and the Guarantor, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (v), (vi), (vii) and (viii) of subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of any agreement by parties thereto other than the Railroad or the Guarantor) and stating that the Railroad and the Guarantor are duly organized and existing corporations in good standing under the laws of their jurisdiction of incorporation and have the full power and authority to own their properties and to carry on their business as conducted on the date thereof;

(f) an opinion of counsel for the Builder and for Itel Corporation, as a guarantor under the CSA ("Itel"), dated as of such Closing Date, to the effect that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the full power and authority to own its properties and to carry on its business as now conducted, (ii) the CSA has been duly authorized, executed and delivered by the Builder and Itel and, assuming due authorization,

execution and delivery by the Railroad and the Guarantor, is a legal and valid instrument binding upon the Builder and ITEL and enforceable against the Builder and ITEL in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and, assuming due authorization, execution and delivery by the Assignee, is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment and (v) the bill of sale referred to in subparagraph (a) of this paragraph has been duly authorized, executed and delivered by the Builder and is valid and effective to transfer all right, title and interest of the Builder in and to the units of Equipment in such Group to the Assignee, free from all claims, liens, security interests and other encumbrances of any nature (other than those created by the CSA and other than the rights of the Assignee under this Assignment);

(g) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that (i) to the best of his knowledge and belief, no event of default, or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and is then continuing, and (ii) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) and, to the best of his knowledge and belief, no other tax liens have been filed and are currently in effect which would adversely affect the title and security interest of the Assignee in the Equipment; and

(h) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad;

provided, however, that with respect to Equipment for which a supplemental invoice is submitted by the Builder as permitted by Article 4 of the CSA, the only documents which must be delivered to the Assignee are those required by subparagraphs (c), (g) and (h) of this Section 4.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms, by a general reference to limitations as to enforceability, imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraphs (d) and (e), counsel may rely on the opinion of counsel for the Builder as to authorization, execution and delivery by the Builder of the documents executed by the Builder and as to title to the Equipment of the Builder at the time of delivery thereof under the CSA; in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States on the opinion of counsel for the Builder or the opinion of counsel for the Railroad or the Guarantor as to such matter; in giving the opinion specified in said subparagraph (e), counsel for the Guarantor may rely as to Mississippi and Alabama law on the opinion of Messrs. Deen, Cameron, Prichard & Young, counsel for the Railroad.

The obligation of the Assignee hereunder to make any payment provided for in this Section 4 is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 17 of the CSA or if an event of default, or any event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and be continuing under the CSA. In the event that the Assignee shall not make payment for any Group of the Equipment as provided in the first paragraph of this Section 4 (other than in respect of a supplemental invoice), the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA. In the event of any such assignment any such subsequent or successive assignee shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad and the Guarantor, the CSA is, insofar as the Builder is concerned, a valid and existing agreement binding upon it and the Railroad and the Guarantor in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, subsequent to the receipt by the Builder of the purchase price for the Equipment, and upon request of the Assignee, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment of the Builder except any portion thereby to be paid for in any supplemental invoice.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder as between parties hereto shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 24 of the CSA.

SECTION 8. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument

to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

ITEL RAILCAR, INC.,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION) as Agent,

by

[Corporate Seal]

Attest:

Assistant Secretary

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

The undersigned hereby consent and acknowledge due notice of the assignment made by the foregoing Agreement and Assignment as of May 31, 1979.

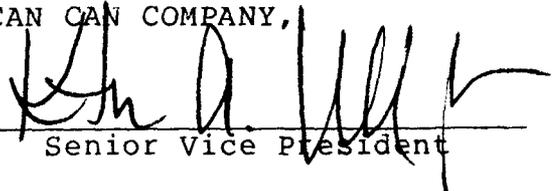
MERIDIAN & BIGBEE RAILROAD COMPANY,

by

President

AMERICAN CAN COMPANY,

by



Senior Vice President

